

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

JOEL BOSH, BOSCH MUSIC PUBLISHING,
BOSCH LLC.

Plaintiffs

v.

SONY MUSIC ENTERTAINMENT US LATIN
LLC.

Defendants

CIVIL NO. _____

COPYRIGHT INFRINGEMENT
MORAL RIGHTS VIOLATIONS
TRADEMARK INFRINGEMENT
UNFAIR COMPETITION UNDER
43(a) LANHAM ACT

Jury Trial Requested

COMPLAINT

TO THE HONORABLE COURT:

Come Now Plaintiffs Joel Bosh, Bosch Music Publishing and Bosch LLC, through undersigned attorneys and respectfully bring this action for copyright infringement, trademark infringement, and unfair competition under 43(a) of the Lanham Act against captioned defendant, as follows:

I. NATURE OF ACTION, JURISDICTION AND VENUE

1. This is an action to recover damages for defendants' willful acts of copyright infringement arising under the 1976 Copyright Act, as amended, 17 U.S.C. §101, et seq.; for trademark infringement and unfair competition under Trademarks Law of the U.S., 15 U.S.C.1051, et seq. and for unfair competition under Puerto Rico law, 10 L.P.R.A. §233w.

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331, and §1338(a) and pursuant to the U.S. Copyright Act, 17 U.S.C. §501(b) and the U.S. Trademarks Act, 15 U.S.C. §1051, et seq. Furthermore, it has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367.

3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1), (b)(2) and (c)(2) and 28 U.S.C. §1400(a) because this is the district in which all defendants are found or are authorized to do business and a substantial part of all infringing actions have occurred in this district.

II. THE PARTIES

4. Plaintiff Joel Bosh is an artist, composer and musician. He is the author of the musical composition “Yo Soy Boricua Pa’ Que tú lo Sepas” (“the Composition”).

5. Plaintiff Bosch Music Publishing is a music publisher that holds the exclusive right to authorize others to use, synchronize, and engage in commercial uses of the Composition.

6. Bosh Music, LLC is a limited liability Company organized under the laws of Florida that owns Bosch Music Publishing.

7. Plaintiff Joel Bosh is the owner of the standard character mark “Yo Soy Boricua Pa’ Que Tu Lo Sepas” duly registered in the Principal Register U.S. Patent and Trademark Office, under registration number 5057145 in class 35, advertising and promotional services. The Certificate is attached as Exhibit 1 to this Complaint. Said Certificate states as date of first use, July 5, 1995.

8. Sony Music Entertainment US Latin LLC, (hereinafter “Sony”) is, upon information and belief, a limited liability company dedicated to the production and promotion of recordings and musical products for sale to the general public.

III. FACTS

9. On or before July, 1996, Joel Bosh created, composed, produced, and recorded the composition “Yo Soy Boricua Pa’ Que Tú Lo Sepas” (the “Composition”).

10. The Composition is an original creation of Plaintiff Bosch and constitutes copyrightable subject matter under the Copyright laws of the United States.

11. Plaintiff Bosch filed for and received copyright registration certificate PAu2-091-562 from the U.S. Copyright Office on July 24, 1996. According to the Certificate, Plaintiff Bosch is the author of the words and music, as well as the copyright claimant. A true and exact copy of said Copyright Certificate is attached to this Complaint as Exhibit 2.

12. Having procured a Copyright Certificate within 5 years of creation and prior to publication, the aforementioned Copyright Certificate constitutes *prima facie* evidence of the matters contained therein regarding ownership. 17 U.S.C. §410 (c).

13. At all times relevant herein Plaintiff and/or his music publisher Bosch Music Publishing has been the sole owner of all rights, titles and interests in and to the Composition and the copyright in the Composition.

14. The Composition is well known, particularly the chorus “Yo Soy Boricua pa’ que tú lo sepas”, which has become a patriotic chant among Puerto Ricans.

15. Between 1996 and 1998, Plaintiff Bosh was a recording artist with Sony. During that time, Sony included the composition “Yo Soy Boricua Pa Que tu lo Sepas” in products it manufactured and/or distributed.

16. Plaintiff Bosh has used the trademark “Yo Soy Boricua Pa Que Tu Lo Sepas” at least since 1995.

17. Plaintiff Bosh has used the mark in commerce by selling and promoting clothing with the mark in activities where Puerto Ricans convene and celebrate activities such as the Puerto Rican Day Parade in New York City and Chicago.

18. Plaintiff Bosh has a Facebook page promoting his services and products (Yo Soy Boricua Pa Que Tu Lo Sepas) as well as a web page (yosoyboricuapaquetulosepas.com) for the sale of his products.

19. Plaintiff Bosh has licensed the use of his trademark to third parties for use in advertising and promotion of other products.

20. Plaintiff’s mark, by its registration in the USPTO, is a valid mark and Plaintiff has the exclusive right to use said mark in commerce.

21. Since the issuance of this registration certificate, Plaintiff Bosh has been and still is the owner of the mark and has used the same in commerce.

22. On or around 2014, Sony launched a compilation of Puerto Rican songs by Puerto Rican artists under the name “Yo Soy Boricua Pa Que Tu Lo Sepas”.

23. This compilation is still sold and available in the marketplace.

24. The Sony product, while sold widely, is aimed primarily at Puerto Rican consumers and is sold in Puerto Rico.

25. Plaintiff's trademark "Yo Soy Boricua Pa Que Tu Lo Sepas" appears prominently in the product packaging and inserts, including as art of the compact disk containing the music.

26. The Sony product made use of Plaintiff's trademark "Yo Soy Boricua Pa Que Tu Lo Sepas" to advertise and promote its product among Puerto Ricans.

27. Sony's use of Plaintiff's trademark has caused confusion as to the origin of the product and its ties with Plaintiff, and/or Plaintiff's mark.

28. There has never been a commercial or other relationship between Plaintiff and Sony for the use of the trademark.

29. The use of Plaintiff's mark in conjunction with Sony's product was an unauthorized use of Plaintiff's mark to advertise and promote Sony's products.

30. Defendant Sony's use of Plaintiff's mark is likely to cause confusion, mistake and deception among consumers by suggesting a business relationship where none exists.

31. Upon information and belief, defendant Sony was aware of Plaintiff Bosh's use of the mark in commerce when it created its product.

32. As a result of defendant Sony's actions, Plaintiff has been harmed and if defendant is allowed to engage in this conduct, will encourage others to infringe upon Plaintiff's mark, thereby destroying the trademark's value.

33. Plaintiff's copyrighted musical composition is centered around the lyric "Yo Soy Boricua Pa Que Tu Lo Sepas" which forms the chorus of the composition and is a significant part of the original musical composition.

34. Sony has used Plaintiff's lyrics as the title of its musical compilation.

35. Sony has copied and reproduced Plaintiff's lyrics in its product, in the packaging, inserts and CD.

36. Defendant did not request a license for the reproduction of Plaintiff's lyrics in relation to SONY's musical product.

37. Defendant did not receive a license for the reproduction of Plaintiff's lyrics in relation to SONY's musical product.

38. Defendant Sony has never been authorized to advertise, manufacture, offer for sale, promote, display, reproduce or distribute a musical product reproducing the lyrics of the chorus of "Yo Soy Boricua Pa Que Tu Lo Sepas".

39. Defendant Sony by reproducing, advertising, manufacturing, offering for sale, promoting, displaying and distributing its musical product, has willfully and intentionally infringed Plaintiffs' copyright and trademark rights in its trademark and copyright.

IV. First Cause of Action – Trademark Infringement – 15 U.S.C. §1114

40. All preceding allegations are incorporated herein by reference.

41. Defendant Sony has used in commerce a reproduction and copy of Plaintiff's registered trademark in connection with the sale, distribution, and advertising of its musical product.

42. Defendant Sony's product is marketed under the name "Yo Soy Boricua Pa Que Tu Lo Sepas".

43. Defendant Sony's actions are likely to cause confusion or mistake and to deceive the public as to the maker, source and origin of the product.

44. Sony's actions are a violation of 15 U.S.C. §1114.

45. This is an exceptional case in which Defendant Sony knowingly and willfully infringed Plaintiff's trademark rights. Plaintiff is therefore entitled to recover, under 15 U.S.C. 1117(a), attorneys' fees as well as three times the actual damages sustained by Plaintiff.

**V. Second Cause of Action - Unfair Competition
Section 43(a) of Lanham Act, 15 U.S.C. §1125(a)**

46. All preceding allegations are incorporated herein by reference.

47. Defendant Sony's actions constitute a false designation of origin and/or a false or misleading description and/or a false or misleading representation of fact that is likely to cause confusion as to affiliation or connection between Defendant and Plaintiff's services and goods and therefore constitute a violation of Section 43(a) of the of Lanham Act, 15 U.S.C. §1125(a).

48. Defendant Sony's intentional action caused confusion with respect to the origin, sponsorship or approval of its goods and services and Plaintiffs goods and services.

49. Sony's intentional action falsely represents that its product is sponsored, marketed, approved and/or licensed by Plaintiff and his services.

50. As a result of Defendant Sony's actions, Plaintiff has suffered detriment to its business, goodwill, reputation and profits in an amount that has yet to be fully ascertained.

51. This is an exceptional case in which Defendant Sony knowingly and willfully infringed Plaintiff's trademark rights. Plaintiff is therefore entitled to recover, under 15 U.S.C. 1117(a), attorneys' fees as well as three times the actual damages sustained by Plaintiff.

VI. Third Cause of Action - Copyright Infringement Violation of Exclusive right to Reproduce Work (17 U.S.C. §106(1))

52. All preceding allegations are incorporated herein by reference.

53. The owner of a work has the exclusive right to reproduce the copyrighted work.

54. Plaintiffs' Composition is duly copyrighted in the U.S. Copyright Office, under PAu2-091-562.

55. Plaintiffs copyrighted composition has been in sold, performed, and distributed since at least, 1996.

56. Defendant Sony had access to the Composition.

57. Defendant Sony used Plaintiff's entire chorus "Yo soy Boricua pa' que tú lo sepas" in its commercial product of the same name.

58. Defendant Sony did not have permission from Plaintiffs to reproduce the lyrics of the chorus of the Composition.

59. Defendant Sony willfully and unlawfully reproduced Plaintiffs' work.

VII. Fourth Cause of Action – Copyright Infringement Violation of Exclusive right to Distribute Work (17 U.S.C. §106(3))

60. All preceding allegations are incorporated herein by reference.

61. The owner of a work has the exclusive right to distribute the copyrighted work.

62. Plaintiffs' Composition is duly copyrighted in the U.S. Copyright Office, under PAu2-091-562.

63. Plaintiffs copyrighted composition has been in sold, performed, and distributed since at least, 1996.

64. Defendant Sony had access to the Composition.

65. Defendant Sony used Plaintiff's entire chorus "Yo soy Boricua pa' que tú lo sepas" in its commercial product of the same name.

66. Defendant Sony did not have permission from Plaintiffs to distribute the lyrics of the chorus of the Composition.

67. Defendant Sony willfully and unlawfully distributed Plaintiffs' work.

VIII. Fifth Cause of Action - Trademark Infringement –Unfair Competition Under Puerto Rico Law. 10 L.P.R.A. § 223a, et seq.

68. All preceding allegations are incorporated herein by reference.

69. Plaintiff Bosh has used his mark "Yo Soy Boricua Pa Que Tu Lo Sepas" in Puerto Rico through various outlets.

70. Defendant Sony's actions described in this Complaint constitute a false designation of origin and/or a false or misleading description and/or a false or misleading representation of fact that is likely to cause confusion as to affiliation or connection

between Defendant and Plaintiff's services and goods and therefore constitute a violation of Section 233w of Puerto Rico Trademarks Law, 10 L.P.R.A. §233w.

71. Defendant Sony's action caused confusion with respect to the origin, sponsorship or approval of its goods and services and Plaintiffs services.

72. Sony's action falsely represents that its product is sponsored, marketed, approved and/or licensed by Plaintiff's services.

73. As a proximate result of Defendant Sony's actions, Plaintiff has suffered detriment to its business, goodwill, reputation and profits in an amount that has yet to be fully ascertained.

IX. Jury Demand

Plaintiffs hereby request a trial by jury.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment ordering the defendant to: (1) pay damages under 15 U.S.C. §1117; (2) pay damages under 17 U.S.C. §504, be there actual damages suffered by Plaintiffs as a consequence of Defendant's infringements as well as all profits derived by Defendant related to the infringements, or statutory damages, at Plaintiffs selection, for the willful infringement of Plaintiffs' exclusive rights of reproduction and distribution; (3) pay damages under Puerto Rico Trademark law, 10 L.P.R.A. §223(w); (4) pay Plaintiffs' attorney's costs and fees incurred in the prosecution of this action pursuant to 17 U.S.C. §505, 15 U.S.C. §1117, and 10 L.P.R.A. §233(w); (5) order the impoundment and destruction of all copies of the infringing works; and (6) any such other relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED

In San Juan, this 25th of May, 2018.

s/ José A. Hernández Mayoral

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